

APPEAL NO. 020707
FILED MAY 15, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 22, 2002. The hearing officer determined, consistent with the Texas Workers' Compensation Commission (Commission)-appointed designated doctor's amended report, that (1) the respondent (claimant) has not reached maximum medical improvement (MMI); and (2) since the claimant has not reached MMI, there can be no impairment rating (IR). The appellant (carrier) appeals the determinations, asserting that the Commission abused its discretion in sending the claimant back to the designated doctor for reexamination, that the designated doctor's certification was not amended within a reasonable time and for a proper purpose, and that the designated doctor's amended certification is contrary to the great weight of other medical evidence. The claimant did not file a response.

DECISION

Affirmed.

We first address the carrier's assertion that the Commission abused its discretion in sending the claimant back to the designated doctor for reexamination. It is undisputed that the claimant sustained a compensable injury on _____. Following the injury, the claimant received conservative treatment, including to his low back. On October 24, 2000, the claimant was examined by the carrier's independent medical examination doctor and was certified at MMI on October 24, 2000, with a 0% IR. The medical records, at the time, indicate that the potential for spinal surgery was discussed with the claimant. The claimant, however, declined to take such aggressive action, wanting more time to think about it. On December 12, 2000, the claimant was examined by a Commission-appointed designated doctor. Noting that the claimant declined spinal surgery "at the present time," the designated doctor certified the claimant at MMI on November 10, 2000, with a 2% IR. The claimant subsequently underwent spinal surgery on July 2, 2001. On August 22, 2001, the Commission requested clarification of the designated doctor's certification in view of the claimant's spinal surgery. Pursuant to that request, the designated doctor reexamined the claimant and amended his certification to indicate that the claimant was not at MMI. Under these circumstances, we perceive no abuse of discretion in the Commission's request for clarification of the designated doctor's initial certification.

The hearing officer did not err in determining, consistent with the designated doctor's amended report, that the claimant has not reached MMI and, therefore, cannot be given an IR at this point. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a request for clarification is considered to have presumptive weight as it is part of the designated doctor's opinion. The rule does not provide any time limits, nor does it require that the amendment be made "for a proper purpose." The hearing officer accepted the amended certification and found that it was not contrary to the great weight of other medical evidence. The carrier does not

point out how the amendment is contrary to the great weight of other medical evidence. The hearing officer's acceptance of the amended certification was not improper. See Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. Upon review of the evidence, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

**GARY SUDOL
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Susan M. Kelley
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Michael B. McShane
Appeals Judge